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8 BANK OF AMERICA, N.A., BANK OF AMERICA
CORPORATION, and NANCY BECERRA

10 **UNITED STATES DISTRICT COURT**

11 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

13 CHAN-HIE KIM, individually and as co-trustee
of the Chan-Hie Kim & Sook-Chung Kim Trust,

14 Plaintiff,

16 vs.

17 WELLS FARGO, N.A.; WELLS FARGO &
18 COMPANY; BANK OF AMERICA, N.A.;
BANK OF AMERICA CORPORATION;
19 VIRGEL MABINI; NANCY BECERRA; DOES
1-100, inclusive

20 Defendants.

Case No. 3:21-cv-05405-JD

**NOTICE OF MOTION AND MOTION OF
DEFENDANTS TO TRANSFER ACTION
TO CENTRAL DISTRICT OF
CALIFORNIA – EASTERN DIVISION
PURSUANT TO 28 U.S.C. § 1404(A);
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Filed concurrently with Declarations of
Nancy Becerra and Tom R. Jordan; Request
for Judicial Notice; Proposed Order]

Honorable James Donato

Date: September 30, 2021

Time: 10:00 a.m.

Courtroom: 11

1 **TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 30, 2021, at 10:00 a.m. or as soon thereafter
3 as this matter may be heard, in Courtroom 11 of the above-entitled Court, located at 450 Golden
4 Gate Avenue, San Francisco, California 94102, Defendants Bank of America, N.A. (“BANA”),
5 Bank of America Corporation (“BAC”), and Nancy Becerra (collectively, “Defendants”) will and
6 hereby do move the Court for an Order transferring this action to the Central District of California
7 – Eastern Division, pursuant to 28 U.S.C. § 1404(a). This motion is made on the grounds that the
8 convenience of the parties and witnesses, the location of the alleged wrongful conduct, and the
9 interests of justice require this action be transferred.

10 This Motion is based upon this Notice of Motion and Motion to Transfer, the attached
11 Memorandum of Points and Authorities, declarations of Nancy Becerra and Tom R. Jordan,
12 Request for Judicial Notice, and all other matters that the Court may consider, including the oral
13 argument of counsel.

14
15 Dated: August 26, 2021

Douglas A. Thompson
Linda C. Hsu
Traci G. Choi
BRYAN CAVE LEIGHTON PAISNER LLP

18
19 By: /s/ Traci G. Choi
Traci G. Choi

20 Attorneys for Defendants
21 BANK OF AMERICA, N.A., BANK OF AMERICA
22 CORPORATION, and NANCY BECERRA
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This action arises out of banking transactions that occurred in San Bernardino County, California, where Plaintiff Chan-Hie Kim (“Plaintiff”) resides. Plaintiff alleges he is an elderly man, who in late 2020, fell victim to a computer “tech support scam.” From September to November 2020, he alleges he initiated wire transfers at the Alta Loma branch of Bank of America, N.A. (“BANA”) and the Montclair branch of Wells Fargo Bank, N.A. (“Wells Fargo”) totaling over \$2 Million. Other than the fact that Plaintiff directed wires from the two banking institutions allegedly at the direction of the same scammers, no connection exists between the transactions that occurred at each institution.

Plaintiff now brings the present lawsuit against BANA and Wells Fargo, as well as their parent companies and one employee from each institution, alleging his banking institutions are liable for the money he lost to the scammers, as well as for wire transaction fees charged in connection with the wire orders he submitted. He alleges two causes of action for financial elder abuse and California’s Unfair Competition Law.

The Complaint demonstrates this action has no connection to the Northern District of California, particularly as to BANA, Bank of America Corporation (“BAC”), and Nancy Becerra (collectively, “BofA Defendants”):

- Plaintiff himself resides in San Bernardino County, California. (Compl. ¶ 3.)
- Plaintiff directed the alleged wire transactions at the Alta Loma branch of BANA, which is located in San Bernardino County, California. (Compl. ¶ 19.)
- All of the witnesses to the alleged wire transactions and circumstances surrounding the transactions, including Plaintiff, are located in San Bernardino County, or San Bernardino County is more convenient for them than San Francisco County.
- BANA and BAC are both headquartered in Charlotte, North Carolina. (Compl. ¶ 7.)

Plaintiff’s sole alleged basis for bringing this action in San Francisco County is that Wells Fargo’s holding company, Wells Fargo & Company (together with Wells Fargo and Virgel

1 Mabini, “Wells Fargo Defendants”), has its principal place of business in San Francisco County. 1
2 (Compl. ¶ 15.) But even the allegations with respect to the Wells Fargo Defendants demonstrate
3 the relevant conduct as to those defendants also occurred in San Bernardino County, California.
4 Plaintiff alleges he directed the alleged wire transactions at the Montclair branch of Wells Fargo,
5 which is located in San Bernardino County, California. (Compl. ¶ 21.) Thus, all of the witnesses
6 to the alleged wire transactions and circumstances surrounding the transactions are located in San
7 Bernardino County. San Bernardino County is undoubtedly a more convenient forum for them
8 than San Francisco County.

9 Plaintiff could, and should, have filed this action in the Eastern Division of the Central
10 District of California. Maintaining this action in the Northern District would force *all* witnesses to
11 travel at least 400 miles to attend trial in this matter, including the elderly Plaintiff himself, which
12 especially during the on-going pandemic may be of concern to Plaintiff and his family from a
13 health and safety perspective. This Court has no particular interest in this action, given that, with
14 respect to the BofA Defendants, none of the parties reside in the Northern District, and further,
15 none of the relevant events occurred in this district. The BofA Defendants respectfully request the
16 Court transfer the action to the Eastern Division of the Central District of California, where
17 Plaintiff resides and where the events giving rise to this action occurred, and where critical
18 witnesses are located.

19 **II. FACTUAL BACKGROUND**²

20 **Plaintiff is a resident of San Bernardino County.** Plaintiff alleges he is a resident of the
21 County of San Bernardino. (Compl. ¶ 3.)

22 **Plaintiff initiates wire transfers at a BANA branch in San Bernardino County.**

23 _____
24 1 BANA reserves the right to move to sever the action given that Plaintiff’s claims
25 essentially are separate vis-à-vis the respective banking institution defendants. That may be an
issue of address at the initial case management conference.

26 2 Defendants deny the allegations of the Complaint and deny any wrongdoing or liability,
27 but for purposes of the instant motion, Defendants cite Plaintiff’s allegations with regard to the
28 locations of events in dispute.

1 Plaintiff collectively refers to BANA, BAC, and Does 26-50 as “BOFA,” and together with Nancy
2 Becerra, “the BOFA DEFENDANTS.” (Compl. ¶¶ 1, 8.) Plaintiff alleges he has been a customer
3 of “BOFA” for over 30 years, where he, as trustee of the Chan-Hie Kim & Sook-Chung Kim Trust
4 held an account. (Compl. ¶ 18.) Plaintiff has not alleged that any of his BANA accounts or
5 transactions which are the subject of the Complaint were initiated from within the Northern
6 District of California.

7 After years of allegedly “frugal transactions with BOFA,” Plaintiff alleges he fell victim to
8 a “tech support scam.” (Compl. ¶¶ 18-19.) Plaintiff alleges he received a pop-up warning
9 message on his computer stating “his computer was hacked, not to touch anything, and to call a
10 phone number.” (Compl. ¶ 19.) He alleges when he called the number, the person he spoke with
11 claimed “he was with Microsoft.” (*Id.*) The scammer stated Plaintiff’s “BOFA” bank account
12 was “hacked” and connected him with another scammer who said “he was with ‘Bank of America
13 Fraud Prevention department.’” (*Id.*) The scammer told Plaintiff his social security number and
14 birthday were exposed and his retirement accounts at “another institution” were at risk. (*Id.*) The
15 scammer then directed Plaintiff “to transfer all of his retirement funds to BOFA in order to
16 ‘rebuild’ his retirement accounts with new account numbers in order to protect his funds.” (*Id.*)
17 Plaintiff alleges he followed the scammer’s instructions, and transferred his retirement funds of
18 over \$2,000,000 to “BOFA.” (*Id.*) Plaintiff alleges that “[i]mmediately following each large
19 deposit from his investment account, [he] entered a BOFA branch and *requested* huge wire
20 transfers with no questions asked by the BOFA DEFENDANTS.” (*Id.*, emphasis added.) Plaintiff
21 alleges most of the 29 wires he requested were made from the “Alta Loma branch of BOFA”
22 between September 23, 2020, and November 10, 2020, and totaled \$1,481,400. (*Id.*) Plaintiff
23 does not identify any other branch from which he made wires.

24 Alta Loma is an unincorporated area that became a part of Rancho Cucamonga, California.
25 It is located in San Bernardino County. (RJN, Ex. 1.)

26 Plaintiff alleges he “walked into his long-time BOFA branch and met in person, face-to-
27 face with a teller, who then would call over a bank manager to approve his wire transfers.”
28

(Compl. ¶ 20.) He alleges on October 20, 2020, he made “three suspicious withdrawals of \$5,000.00, \$5,000.00 and \$10,000.00 cash.” (*Id.*) Plaintiff does not allege any other impropriety with respect to the withdrawals he requested “face-to-face,” other than that they were allegedly “suspicious.”

Plaintiff initiates wire transfers at a Wells Fargo branch in San Bernardino County.

Plaintiff alleges similar events with respect to the “WELLS FARGO DEFENDANTS,” instructing wire transactions to the scammers totaling \$591,000.00. (Compl. ¶ 21.)

Plaintiff alleges he made an “Edeposit” in the Upland branch of Wells Fargo. (*Id.*) Plaintiff alleges the “majority of the wire transfers were made from the Montclair branch of WELLS FARGO.” (*Id.*) He alleges he entered the Wells Fargo branch and “made huge wire transfers via face-to-face interactions with no questions asked by the WELLS FARGO DEFENDANTS.” (*Id.*)

The City of Montclair is located in San Bernardino County. (RJN, Ex. 1.) Upland is also a city in San Bernardino County, California. (RJN, Ex. 1.)

The only common thread between Plaintiff’s allegations against the Bank of America Defendants and the Wells Fargo Defendants is that Plaintiff directed both BANA and Wells Fargo to wire moneys in several distinct transactions at the direction of the same scammers.

Based on the above, Plaintiff alleges two causes of action – a first cause of action for Financial Elder Abuse, and a second cause of action for Unlawful, Unfair and Deceptive Business Practices. Plaintiff claims Defendants assisted the scammers in defrauding Plaintiff and improperly refused to return wire fees that were charged in connection with the several requested transactions upon being notified of the scam.

III. THIS ACTION SHOULD BE TRANSFERRED TO THE CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION.

“For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought[.]” 28 U.S.C. § 1404(a); *see also Van Dusen v. Barrack*, 376 U.S. 612, 616, 634 (1964). “Section

1 1404(a) ‘displaces the common law doctrine of forum non conveniens’ with respect to transfers
2 between federal district courts. . . . By passing § 1404(a), Congress ‘intended to permit courts to
3 grant transfers upon a lesser showing of inconvenience’ than was needed for dismissal under the
4 doctrine of forum non conveniens.” *Saleh v. Tital Corp.*, 361 F. Supp. 2d 1152, 1155-56 (S.D.
5 Cal. 2005) (citing *Norwood v. Kirkpatrick*, 349 U.S. 29, 31-32 (1955)). The Court has “broad
6 discretion in deciding a motion to transfer venue because the analysis involved is ‘flexible and
7 individualized.’” *Eclipse IP LLC v. Volkswagen Group of America, Inc.*, 2013 WL 9935572, at *2
8 (C.D. Cal. May 10, 2013) (citing *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988)).

9 The factors weigh heavily in favor of transferring the present action.

10 **A. This Action Could (and Should) Have Been Brought in the Central District of**
11 **California.**

12 The first inquiry when analyzing a case’s eligibility for 1404(a) transfer is whether the
13 judicial district to which transfer is sought would have been a district in which the claim “might
14 have been brought[.]” *See* 28 U.S.C. § 1404(a); *see also Hoffman v. Blaski*, 363 U.S. 335, 344
15 (1960) (holding that a district is one in which the action “might have been brought” if, when the
16 complaint was filed, the plaintiff had a right to sue in that district). A district court is one in which
17 the action originally “might have been brought” if: (i) it has subject matter jurisdiction; (ii)
18 defendants would have been subject to personal jurisdiction there; and (iii) venue would have been
19 proper there. *Commercial Lighting Prods., Inc. v. U.S. Dist. Court*, 537 F.2d 1078, 1079 (9th Cir.
20 1976).

21 There is no question that Plaintiffs could have brought this action originally in the Central
22 District of California because this action meets all three requirements.

23 The Central District of California has subject matter jurisdiction over this action because
24 the action is subject to federal court jurisdiction based on the Edge Act. (*See generally* Notice of
25 Removal, ECF No.1.)

26 Defendants are also subject to personal jurisdiction in the Central District of California.
27 The only BANA branch mentioned in the Complaint is located in San Bernardino County,
28

1 California, which is located within the district. (Compl. ¶ 19, RJN, Ex. 1.) The two Wells Fargo
2 branches mentioned in the Complaint are also located in San Bernardino County, California.
3 (Compl. ¶ 21, RJN, Ex. 1.)

4 Further, venue is proper where, as here, a substantial part of the events or omissions on
5 which the claim is based occurred in the transferee forum. 28 U.S.C. § 1391(b)(2). A substantial
6 portion of the events giving rise to this action took place in the Eastern Division of the Central
7 District of California. *See* 28 U.S.C. § 84(c)(1) (listing San Bernardino County as within the
8 Eastern Division of the Central District of California). This action is based on alleged wrongful
9 conduct which occurred in San Bernardino County, California—within the Central District of
10 California. Plaintiff alleges that he made “huge wire transfers via **face-to-face interactions**”
11 (Compl. ¶¶ 20, 21, emphasis added) at both financial institutions, in their branches located in the
12 Central District, and claims he was harmed as a result of Defendants’ “failure to properly train
13 [their] representatives on policies and procedures” at those branches. (Compl. ¶ 32.) All of these
14 events necessarily took place in the Central District.

15 Thus, there is no question that this action could have been brought in the Central District of
16 California.

17 **B. The Factors Weigh in Favor of Transfer**

18 “A motion to transfer venue under § 1404(a) requires the court to weigh multiple factors
19 in its determination whether transfer is appropriate in a particular case. For example, the court
20 may consider: (1) the location where the relevant agreements were negotiated and executed, (2)
21 the state that is most familiar with the governing law, (3) the plaintiff’s choice of forum, (4) the
22 respective parties’ contacts with the forum, (5) the contacts relating to the plaintiff’s cause of
23 action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the
24 availability of compulsory process to compel attendance of unwilling non-party witnesses, and
25 (8) the ease of access to sources of proof.” *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 198-
26 99 (9th Cir. 2000); *see also E. & J. Gallo Winery v. F. & P. S.p.A.*, 899 F. Supp. 465, 466 (E.D.
27 Cal. 1994) (“These factors break down to a number of relevant considerations: convenience of
28

1 witnesses, judicial economy, relative ease of access to proof, and availability of compulsory
2 process”).

3 We address each of the factors below.

4 **Location where relevant agreements were negotiated and executed.** To the extent any
5 agreements are relevant to Plaintiff’s claims against BANA (or the other BofA Defendants),
6 Plaintiff likely negotiated and/or entered into those agreements in San Bernardino County. For
7 example, upon opening an account, customers enter into a Deposit Agreement with BANA.
8 Plaintiff opened the account from which the funds were transferred in San Bernardino County,
9 California, and entered into the Deposit Agreement there. (Declaration of Tom R. Jordan ¶ 4, Ex.
10 1.)

11 **State that is most familiar with the governing law.** This Court and the Central District
12 are both California federal courts, and familiar with the governing law. This factor does not weigh
13 in favor of either venue.

14 **Plaintiff’s choice of forum.** While courts afford the plaintiff’s choice of forum substantial
15 weight, “[a] plaintiff’s choice of forum is entitled to less deference, however, when the plaintiff
16 elects to pursue a case outside [his] home forum.” *Allstar Marketing Group, LLC v. Your Store*
17 *Online, LLC*, 666 F.Supp.2d 1109, 1131 (C.D. Cal. 2009). Plaintiff is not a resident of the
18 Northern District of California. He resides in San Bernardino County – the appropriate forum for
19 this action. His “choice” of the Northern District should not weigh against a transfer to the
20 Central District, where Plaintiff resides.

21 **The parties’ contacts with the forum.** This factor weighs in favor of transfer. Based on
22 the allegations in the Complaint, Plaintiff has *no* contacts with the Northern District of California.
23 He does not allege a single relevant transaction involved banking activity in the Northern District
24 of California, nor can he. All of the relevant transactions occurred in the Central District.

25 Nor do the BofA Defendants have any substantial contacts with the Northern District
26 relevant to this dispute. BANA and BAC are headquartered in Charlotte, North Carolina.
27 (Compl. ¶ 7.) Ms. Becerra also works in the Alta Loma branch of BANA, and resides in San
28

1 Bernardino County.³ (Declaration of Nancy Becerra ¶¶ 2, 3.) While BANA does have branches
2 in the Northern District of California, none of those branches were involved in the alleged
3 transactions. There is no connection between the “contacts” BofA Defendants have with the
4 Northern District and the present lawsuit.

5 That Wells Fargo & Company, the holding company of Wells Fargo, has its headquarters
6 in San Francisco, is the only “contact” Plaintiff alleges Defendants have to the Northern District.
7 As an initial matter, Plaintiff’s claims against the Wells Fargo Defendants arise from separate
8 transactions and alleged wrongful conduct by those defendants, and lack any substantial
9 relationship to the alleged wrongful conduct by the BofA Defendants. In fact, Plaintiff and the
10 Wells Fargo Defendants are currently conferring regarding the submission of the claims as to
11 those defendants to arbitration, which will necessarily sever the claims between the two financial
12 institutions. (*See* ECF No. 28, at 2:19-22.)

13 Further, even if the Wells Fargo Defendants remained in this action, based on the
14 allegations in the Complaint, the only Wells Fargo branches involved in the relevant transactions
15 and alleged wrongful conduct were located in the Central District of California. Further, Wells
16 Fargo & Company, like BAC, is a holding company. The operational, customer-facing entity is
17 Wells Fargo, which has a principal place of business in Sioux Falls, South Dakota. (RJN, Ex. 4.)

18 **Costs in litigation and availability of witnesses.** The cost of litigation and availability of
19 witnesses weighs heavily in favor of transfer. “The convenience of witnesses is the most
20 important factor in deciding a motion under § 1404(a).” *Lehman Bros. Holding, Inc. v. Gateway*
21 *Bus. Bank*, 2014 WL 1330033, at *3 (C.D. Cal. Mar. 31, 2014) (internal quotations omitted).
22 “The convenience of nonparty witnesses is paramount.” *Kosta Int’l v. Brice Mfg. Co. Inc.*, 2015

23 _____
24 ³ Defendants maintain Plaintiff fraudulently joined Nancy Becerra, and she should be
25 dismissed from this action. *See Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir.
26 2001); *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318-19 (9th Cir. 1998). But because Plaintiff
27 has decided to name her as a Defendant, her contacts with the forum are still relevant to the
28 analysis. Even if she is dismissed from the case, as Defendants contend, Ms. Becerra is likely to be
a potential witness in the matter, as may be others who worked in the respective Southern
California bank branches.

1 WL 13306131, at *5 (C.D. Cal. Mar. 9, 2015).

2 The vast majority of the key witnesses, if not all of them, in this case are located in San
3 Bernardino County. The only branches Plaintiff identifies are located in San Bernardino County.
4 The employees that worked at those branches, as well as Plaintiff and his wife, are all located in
5 San Bernardino County or reside near there. The tellers at these branches are relevant witnesses to
6 the alleged “face-to-face” interactions with Plaintiff. (Compl. ¶¶ 20, 21.) Other employees who
7 observed Plaintiff at the branch may also be witnesses to the alleged transactions. These
8 witnesses’ personal observations of Plaintiff and involvement in the alleged wire transfers are
9 central to this case. Plaintiff and his wife are also witnesses, and they both reside in San
10 Bernardino County as well.

11 By contrast, there are *no witnesses* that are located in the Northern District of California.
12 None of the relevant transactions occurred in the Northern District. Plaintiff himself is not located
13 in the Northern District, nor does he identify in his Complaint a single witness for whom the
14 Northern District is more convenient.

15 “When the distance between an existing venue for trial of a matter and a proposed venue
16 under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in
17 direct relationship to the additional distance to be travelled.” *In re Volkswagen of America, Inc.*,
18 545 F.3d 304, 317 (5th Cir. 2008). San Francisco and San Bernardino are roughly 435 miles
19 apart. All of the witnesses would incur significant travel costs and have to make travel
20 arrangements in order to attend trial in this matter in San Francisco County. Coupled with the fact
21 that not a single witness resides in the Northern District, the convenience of the witnesses weighs
22 heavily in favor of transferring the action.

23 **Availability of the compulsory process.** “[T]o fix the place of trial at a point where
24 litigants cannot compel personal attendance and may be forced to try their cases on deposition, is
25 to create a condition not satisfactory to court, jury, or most litigants.” *Van Schijndel v. Boeing*,
26 434 F. Supp. 2d 766 (C.D. Cal. 2006), quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 511
27 (1947); *see also Star Stone Quarries, Inc. v. Garland*, 300 F. Supp. 2d 1177, 1182 (D. Utah 2003)

1 (“If this Court retained jurisdiction and venue it would lack compulsory power to assure the
2 attendance of most of these witnesses, the vast majority residing far beyond 100 miles of this
3 Court”).

4 To the extent any relevant witnesses are no longer employed by Defendants, this factor
5 also weighs in favor of transfer. While the Court could compel attendance if the witnesses still
6 reside in California, these nonparty witnesses would also be forced to travel over 400 miles to
7 attend trial. The time and cost imposed on these witnesses is significant.

8 **Ease of access to sources of proof.** This factor also weighs in favor of transfer. To the
9 extent any physical documentary evidence exists, those likely are all located in the branches in
10 which Plaintiff initiated the wire transfers, and thus located in San Bernardino County, not San
11 Francisco County. Plaintiff’s own personal records and papers also likely are maintained at his
12 home located in Southern California, not Northern California. Any relevant electronic evidence
13 would be just as easily accessed if the case were pending in San Bernardino County.

14 * * *

15 The above factors demonstrate that transfer to the Eastern Division of the Central District
16 of California would further the interests of justice and the convenience of the parties and
17 witnesses. This case arises out of events occurring entirely in San Bernardino County, California.
18 Additionally, the vast majority of the relevant documentary and testimonial evidence are located in
19 San Bernardino County, over 400 miles away from this Court. The Eastern Division of the
20 Central District of California is a more appropriate, convenient, and efficient venue for this matter.

21 **IV. CONCLUSION**

22 For the foregoing reasons, the BofA Defendants respectfully request that this Court
23 transfer this case to the Eastern Division of the Central District of California.

1 Dated: August 26, 2021

Douglas A. Thompson
Linda C. Hsu
Traci G. Choi
BRYAN CAVE LEIGHTON PAISNER LLP

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4 By: /s/ Traci G. Choi

Traci G. Choi

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